HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3376 of 2006

Dated:15.09.2006

Between:

B.Abdul Shukur and others.

…Petitioner

and

The A.P.State Wakf Board.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3376 of 2006

ORDER:

The petitioners who are seventeen in number filed the instant Writ Petition impeaching the proceedings of the first respondent bearing No.72/KNL/C3/2005, dated 16.02.2006, in the background of the facts noticed herein below.

The petitioners are residents of Bilakal Gudur Village, Gadivemula Mandal in Kurnool District. They were appointed by proceedings dated 05.12.2005 of the first respondent as Members of Managing Committee of Jamia Mosque in Bilakal Gudur Village. However, by impugned proceedings, the earlier orders dated 05.12.2005 were cancelled, further directing that the Managing Committee constituted in Proceedings dated 18.08.2005 shall remain in force and continue. The impugned order is assailed, *inter alia,* on the ground that no notice was issued to any of the petitioners before canceling the orders appointing as Members of the Managing Committee.

At the stage of admission itself, the first respondent as well as respondents 3 to 13 filed separate counter affidavits. In the counter affidavit filed by the Chief Executive Officer of the A.P.Wakf Board it is stated that Jamia Mosque of Bilakal Gudur Village is a notified Wakf in respect of which power of general superintendence of administration vests under Section 32 of the Wakf Act, 1995 (for short 'the Act'), with

the first respondent. On an application made by respondents 3 to 13, by proceedings dated 18.08.2005 they were appointed as Members of the Managing Committee under Section 18 of the Act. The District Collector, Kurnool, the second respondent herein, addressed a letter dated 20.10.2005, advising to change the Committee on an allegation that the earlier Committee was not managing the Mosque. Therefore, the first respondent revised the earlier orders dated 18.08.2005 and appointed a new Managing Committee on 05.12.2005 consisting of the petitioners. Though it is denied that the impugned order came to be passed under the influence of the Hon'ble Member of Parliament, Nandyal Constituency, and the Hon'ble local M.L.A, the allegation that notice was not issued to the petitioners is not specifically denied. It is stated that the earlier orders were issued subject to modification and revision, and therefore, cancellation of the orders is legal.

In their counter affidavit, respondents 3 to 13 assert that pursuant to the orders dated 18.08.2005, they are discharging the duties as members of the Managing Committee and also collecting rents from the tenants.

The matter was heard yesterday and all the learned Counsel reiterated the submissions taken in the pleadings. Having noticed that the impugned order was issued by the Chief Executive Officer canceling the Board proceedings, dated 05.12.2005, this Court directed the learned Standing Counsel for the A.P.Wakf Board to produce the relevant file. The file is produced today before this Court.

A perusal of the file would show that on 08.08.2005 one S.A.Waheed made a representation stating that Mutawalli of the Jamia Mosque in the Village expired long back, that the legal heirs were not looking after the affairs of the Mosque, that local Muslims of the Village decided to constitute a Managing Committee to look after the Mosque, and accordingly elected fifteen persons including respondents 3 to 13. Accordingly, the Chief Executive Officer issued proceedings on 18.08.2005 appointing respondents 3 to 13 as Members of the Managing Committee. Thereafter, two interesting things happened. The District Collector wrote to the Chief Executive Officer to cancel the proceedings dated 18.08.2005 and appoint a new Managing Committee alleging that respondents 3 to 13 herein are not taking care of the Mosque properly. Based on that letter, the Special Officer again issued proceedings on 05.12.2005 appointing a new Managing Committee consisting of the petitioners herein, without canceling the earlier proceedings dated 18.08.2005 or without issuing any notice to

respondents 3 to 13. Again there was intervention in the functioning of the first respondent in the shape of two letters, one addressed by the Hon'ble Member of the Parliament, Nandyal Constituency, and the other by the Hon'ble M.L.A., Atmakur Constituency, requesting to reconstitute the Committee. When the letter of the Hon'ble Member of Parliament was circulated to the Special Officer, he endorsed to cancel the proceedings dated 05.12.2005, pursuant to which, the impugned order came to be issued.

The appointment of a Managing Committee under Section 18 of the Act for notifying Wakf is an important statutory function. Such function has to be exercised independently by applying sound judicious discretion. While exercising such discretion the statutory power cannot be abdicated by the Wakf Board. When the Wakf Board is not properly constituted or when the properly constituted Wakf Board is superseded under Section 99(1) of the Act, under subsection (2) of Section 99 of the Act all the powers and duties under the Act exercised by the Wakf Board shall be exercised by the Special Officer.

A Division Bench of this Court in **Intezami Committee Mazid-E-Osmania v. A.P.State Wakf Board**[1] laid down about the scope of the power under Section 18 of the Act in the following manner.

> A mere reading of the above is enough to convince that the Board has to be satisfied that it is necessary to establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs. It cannot be the satisfaction of a Member of the Legislative Assembly or a Minister in the Government of the State that will decide the necessity to establish a committee and who shall be the members of the committee. It is obvious and ancillary to the power of the Board to appoint committees, that it is required to be decided not by any outside agency or person but by the Board. The Special Officer who exercised the powers of the Board thus could decide on his own whether it was/is necessary to establish the above ad hoc committee and who would/shall be the members of the committee. He could not have decided to appoint an Ad hoc Managing Committee because a certain Member of the Legislative Assembly wanted him to do so or because a Minister in the Government of the State endorsed the recommendations of the Member of the Legislative Assembly. One of the settled principles of law which Lord *Esher M.R.* stated in The Queen on the Prosecution of *Richard Westbrook* in the late 19th century (1890) 24 Queens Bench Division 371, "If people who have to exercise a public duty by exercising their discretion

> take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion" has found very many eminent approvals including that of the Supreme Court of India in *S.R.Venkataraman v. Union of India* (1) AIR 1979 SC 49 and it is stated in the later, "The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence".

Therefore, if the power of the Special Officer is exercised based on the letters of the elected representatives of the area or the District Collector, the exercise of power would certainly be vitiated in law. Therefore, the impugned order is unsustainable.

This Court found from the file that the Mutawalli of the Mosque in the Bilakal Gudur Village passed away long back and the Wakf Board has not initiated any steps for appointing a Mutawalli. This has necessitated constituting of Managing Committee under Section 18 of the Act. When a representation was made by one of the local Muslim stating that all of them have elected fifteen persons to act as Managing Committee, respondents 3 to 13 were appointed as members of the Managing Committee by proceedings dated 18.08.2005. The same was, however, modified/revised without conducting enquiry on the basis of the letter addressed by the District Collector. This exercise itself does not stand scrutiny before this Court. Secondly, even though a new Committee consisting of petitioners was appointed by proceedings dated 05.12.2005 and even before the new Committee would take appropriate steps in right direction their appointment is cancelled without issuing notice to them. All these events would lead to an inference that management systems and administrative procedures followed by the A.P.Wakf Board are desired to be improved.

Therefore this Writ Petition is disposed of setting aside the impugned proceedings with a direction to the first respondent to consider the claims of the petitioners and respondents 3 to 13 after giving an opportunity to them and appropriate orders may be passed after doing so within a period of four weeks from the date of receipt of a copy of this order. Till then *status quo* as on today shall continue. There shall be no order as to costs.

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(V.V.S.RAO, J)

15.09.2006

vs

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[1] 1996 (2) ALD 661 (D.B)